



Discussion Material for Small Unit Leaders: Issues of Garrison Ethics and Leadership



2009

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"...It is a matter of dealing with the emotions, the spirit, the souls of the troops. A man successful in this realm is a great leader, and qualities necessary to make him successful are known as the qualities of leadership. How, then, shall we inculcate and cultivate these qualities and become creators of esprit and therefore, successful leaders of men?"

-MGen John A. Lejeune, USMC

The genesis of this booklet lies in the Commandant's Working Group on Values and Ethics in the Marine Corps held at Quantico, Virginia in May 2007. Following that meeting the Lejeune Leadership Institute developed and published two booklets of vignettes; case studies and teaching materials on Law of War and Battlefield Ethics. These were presented to Marine noncommissioned officers (NCO's) in attendance at the 2008 Russell Leadership Conference. One of the items requested by the NCO's following the conference was a companion volume covering garrison ethics.

Taking some of the suggestions from NCO's made at the 2008 Russell Leadership Conference and drawing upon the experiences of Marines and Sailors from Inspector Generals to Judge Advocates to Chaplains to SNCO's to sister services, LLI produced a great number of vignettes, or situational case studies. These vignettes were all based upon real-life events, though the names, units and locations were changed. The vignettes were then presented to focus groups at various schools including the Staff NCO Academy, Expeditionary Warfare School, Command and Staff College, and the Enlisted Professional Military Education directorate at Marine Corps University. Several iterations of writing and reviewing followed.

Each vignette in this volume provides a leader with a tool to examine an area of ethical decision making found in the garrison environment. The primary focus is to place in the hands of the reader/Marine leader all the resources to help that leader create a teachable moment for junior Marines. Each vignette consists of a brief description of a situation, some questions for guided discussion, and a list of relevant orders and instructions that impact upon the decision making. Additionally, these references are provided to the discussion leader and participants for clarification of current policies and resources. The chapter on "Discussion Leading Techniques" found in MCRP 6-11B provides guidance on how to best make use of these materials.

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Case 1. Spouse abuse; Loyalty; Courage

You are a sergeant (Sgt) in charge of a small supply section. Over the past several months, a number of incidents have come to your attention leading you to believe that a corporal (Cpl) who works as a clerk in another section is suffering physical abuse at the hands of his wife, a Sgt. The Sgt works elsewhere on the base. You recently approached the Cpl's noncommissioned officer in charge (NCOIC) regarding the matter. The NCOIC made it very clear that this was none of your business and that he would handle any problems in his section.

A few days later, you noticed the Cpl with obvious bruising on his face. Concerned that the incidents were becoming more frequent and more serious, you speak to his NCOIC once more to see if the situation has been addressed. He was more approachable this time. However, he assured you that your information must be wrong because he had spoken with the Cpl and been assured that everything was fine.

Questions

1. Has a crime or violation of the Uniform Code of Military Justice (UCMJ) occurred here? Should you do or say anything about your suspicion of domestic violence?

- a. No, it's none of my business what the couple does at home.
- b. Yes, but it's the Cpl's NCOIC who needs to take care of it.
- c. Maybe, and it's my responsibility to report my suspicions.

Correct Answer: c

Discussion: While you do not know for certain whether or not there is a domestic violence situation here, you are obligated to report your suspicion. The only way to know for sure is for it to be properly investigated. That means reporting it to the chain of command. The Cpl's NCOIC is a good start. The fact that he took offense to your involvement initially suggests that either the situation had gone unnoticed, or the supervisor was not willing to take the required action and report it himself. Every Marine has an obligation to report abuse, whether known or suspected. The Marine Corps Personal Services Manual, MCO 1700.24B explains abuse, and who or where to direct reports.

2. Should you have continued to pursue the issue with the Cpl's NCOIC the second time?

- a. No, it's not my responsibility anymore; I reported it to the Marine's NCOIC and have done my part.
- b. No, I should begin to investigate what's really going on between the Cpl and Sgt myself.
- c. Yes, if I suspect the situation has not changed, I am obligated to report it.

Correct Answer: c

Discussion: You were correct to continue your involvement. In this case the Cpl's NCOIC may have changed his attitude about the situation, yet was failing to take the corrective action required given the information (bruises on the Cpl's face). Therefore, if you believe it has continued and the supervisor has failed to properly report it, you have an obligation to also report it to the chain of command, so that the situation could be properly investigated and help given to any victim in this case. In this case you reported it to the alleged victim's chain of command with no real result. Therefore, you should report it to your own chain of command, for example, your staff noncommissioned officer in charge. The MCO provides some other resources in addition to your own section chain of command. Only the commander can initiate an investigation. Do not take it upon yourself to investigate the details of this situation. It is every Marine's responsibility to look out for the health and welfare of all Marines, and their families in the case of domestic abuse/violence. Simply stated domestic abuse/violence is contrary to our Core Values of Honor, Courage, and Commitment and cannot be tolerated within the Marine Corps.

3. Since you and the Cpl's spouse are the same rank, is it disloyal for you to report your suspicions about her?

- a. Yes, it's really none of my business. She's a Sgt too, so she wouldn't be doing anything wrong anyway.
- b. No, my loyalty is not to an individual Marine, but to the unit and Marine Corps.

Correct Answer: b

Discussion: In situations such as this, Marines can often feel conflicted as to what is the right thing to do. Some would say reporting your suspicion makes you disloyal to your fellow Marines, in this case another Sgt. However, the reality is that domestic violence is not acceptable in the Marine Corps or any military service. It detracts from a Marine's performance and negatively impacts the efficient functioning and morale of the unit. Ultimately, domestic violence/abuse diminishes the reputation and prestige of the Marine Corps and negatively affects individuals, families and the community. Therefore, you do not have any duty to protect or loyalty to another Marine who is failing to uphold the standards of our Corps.

Applicable references: Department of Defense Directive (DoD) 6400.1, Family Advocacy Program (FAP); SECNAVINST 1852.3B, Family Advocacy Program; Under Secretary of Defense Memo dtd 22 Oct 04 Establishing Law Enforcement and Command Responses to Domestic Violence Involving Military Members on Active Duty; MCO 1700.24B, Marine Corps Personal Services Manual.

Case 2. Sexual Harassment; Misbehavior of Seniors; Loyalty

You are a sergeant working in the admin section of a training command. One day, you notice that the Commanding Officer's (CO's) driver, a Cpl, is preparing to leave at midday. You ask him if everything is all right, since it is unusual for him to leave early. He replies that everything is fine, but he has some personal errands to run and was asked by the CO to complete a few of her personal chores as well.

You are surprised and ask if this is a regular occurrence. He replies that he sometimes does other personal errands for the CO but what he really wishes is that she would stop "hitting" on him. You are shocked and ask for an explanation. He then tells you that the CO has, on a number of occasions, and always in a 'laughing' manner, stated that they should have an affair. He has always declined and explains that she should not be saying things like that, but the behavior has continued. He doesn't want to jeopardize his position and doesn't want to make a big deal out of it.

Questions

1. Did the CO do anything wrong repeatedly joking about an affair with her driver?
 - a. No, she must have a bad sense of humor though.
 - b. No, the driver shouldn't be taking it so seriously, it was a joke.
 - c. Yes, but that's to be expected when you work closely with a member of the opposite sex. It's just something the driver will have to "deal with" if he wants the job of CO's driver.
 - d. Yes, the driver shouldn't have to keep asking her to stop joking about an affair.

Correct Answer: d

Discussion: The Marine Corps Order on sexual harassment (MCO1000.9A) is very clear, especially in a situation such as this. The CO has made repeated jokes/comments to her driver about having an affair. The driver has repeatedly asked her not to make such jokes/comments. This is the preferred method of resolving the situation, making an individual immediately aware of how their words or behavior are inappropriate and asking them to stop. By continuing the inappropriate suggestions or jokes that she and the driver have an affair the CO has created a hostile work environment for the driver, violating the MCO.

2. Should the driver be running personal errands for the CO?
 - a. No, the CO's driver should only be executing official business, not personal errands for the CO.
 - b. Yes, it's not like he was driving the CO anywhere anyway and he got secured early, too.
 - c. Yes, that's just part of the job for a CO's driver.

Correct Answer: a

Discussion: Neither the CO's driver, nor any other Marine should do personal errands or other personal support for an officer/Marine. Such personal servitude can be disruptive to the good order and discipline and morale of the unit. It is unfair to the Marine being tasked with the personal errands and can create a perception of favoritism or inappropriate familiarity. Other Marines might suspect the driver is getting preferential treatment (being secured early). Article 1165, U.S. Navy Regulations 1990 states "*personal relationships, or fraternization, between officer and enlisted members which are unduly familiar and do not respect differences in rank are inappropriate and violate long standing traditions of the naval service.*" Additionally the Joint Ethics Regulation specifically prohibits tasking personal errands to Marines assigned to duties such as drivers, secretaries or military aides.

3. What should happen next? What should you do?

- a. Nothing, it's none of my business.
- b. Speak to the CO's driver, encourage him to lodge a formal complaint.
- c. Talk to the Chaplain about the situation.
- d. Talk to the Battalion Sergeant Major (Bn SgtMaj) or the Marine's first sergeant.

Correct Answer: b and d

Discussion: The Marine Corps policy on sexual harassment is stated in MCO 1000.9A. Quite simply, it is prohibited. That does not mean it does not occur, rather, when it does, it must be addressed immediately. This situation is even more difficult since the CO is the one creating the hostile work environment. Each command has an Equal Opportunity representative designated to assist with these and other complaints of discrimination. Sexual harassment is a form of discrimination. Chapter 5 of MCO P5354.1D, Marine Corps Equal Opportunity Manual, gives specific guidance on complaint procedures.

The CO's driver has repeatedly attempted to resolve the situation informally, asking the CO to refrain from making inappropriate jokes/comments about having an affair. Yet the behavior has continued. Therefore, the driver should file a formal complaint. The preferred method is Request Mast. It is the most timely method in that the Request Mast must be conducted quickly. In general, there should be no more than one working day delay from when the request is presented to when the Marine sees his/her commander. This should apply at each level of command. NAVMC Directive 1700.23F provides specific Request Mast procedures for submitting and processing. Whatever the method chosen for the complaint, the command EO representative can assist the CO's driver in the complaint process. Also, the first sergeant and Bn Sgt Maj will be engaged in the Request Mast process, so making them aware of the issue before hand can only assist the process.

4. What if the CO's driver doesn't want to file a formal complaint?

Discussion: Many Marines do not want to pursue the formal complaint process of Request Mast out of fear of reprisal from the commander or others. *Request Mast includes both the right of the Marine to communicate with the commander, normally in person, and the requirement that the commander consider the matter and personally respond to the Marine requesting mast. Request Mast provides a Marine the opportunity to communicate not only with his or her immediate commanding officer, but also with any superior commander in the chain of command up to and including the Marine's commanding general. Request Mast also provides commanders with firsthand knowledge of the morale and general welfare of the command. To be effective, Request Mast must have the wholehearted support of those to whom the leadership of Marines is entrusted. Anyone who attempts to deprive a Marine of the right to Request Mast, through either acts of omission or commission, will be subject to punishment under (the Uniform Code of Military Justice (UCMJ)).* (NAVMC Directive 1700.23F Request Mast Procedures)

5. What if the case had involved a male CO and female driver? Or, what if the CO and driver were the same gender? Would these facts make a difference in your reaction to the scenario?

Applicable references: DoD 5500.7R, Joint Ethics Regulations; Article 1165, U.S. Navy Regulations 1990; NAVMC Directive 1700.23F Request Mast Procedures; MCO 1000.9A, Sexual Harassment; MCO 1700.23F, Request Mast; MCO P5354.1D, Marine Corps Equal Opportunity Manual; MCO P5800.16A, Marine Corps Manual for Legal Administration (LEGADMINMAN).

Case 3. Courage; Misbehavior of Seniors; Fraud

You are a corporal working in the fiscal section of a base headquarters as a claims clerk. A senior staff noncommissioned officer (SNCO) who works in the same headquarters has previously submitted what you suspected were “questionable” travel claims. For example, the dates and expenses were excessive for the task he had been assigned. He often had no documentation for the expenses because he had a habit of “misplacing the originals.” Whenever you had asked him about the details of his claims, he became angry and reminded you that he outranks you and “it is not your job to question your superiors.” The last time it happened, he told you that members of this headquarters should look out for one another. He also reminded you that “senior members in his headquarters stick together” and “often talk about subordinates.” He mentioned that it might be a bad career move for you to develop a bad reputation for not being a team player. Then he told you to process his claim.

Once again, the same senior SNCO submits a claim that is filled with inconsistencies. At this point you realize that although you process, or submit, the unit’s travel claims, all claims must be certified by your section staff noncommissioned officer-in-charge (SNCOIC), in order for payments to be issued. Despite the suspicious nature of the past claims, they have all been processed and the SNCO received travel settlements for each. Therefore, you suspect your SNCOIC may also be involved. You now strongly believe these are fraudulent claims for expenses that the SNCO has not incurred, such as a car rental and accommodation costs.

Questions

1. Should you, or can you do anything about this situation?
 - a. I should, but I can’t, my SNCOIC will “non-rec” me for promotion or give me bad pro/cons if I say anything.
 - b. I should, and I don’t know what to do or where to go. Normally, I would go to my SNCOIC for guidance, but now what?
 - c. I should, but I’m not a snitch.

Correct Answer: b

Discussion: This is an extremely difficult situation for any Marine. But the reality is, you have to speak up if you suspect there is something illegal or “wrong” going on. You could ask your SNCOIC for guidance on processing the claims, since the required documentation was not submitted. Maybe it was an oversight on your SNCOIC’s part, maybe not.

2. What if you report it to you SNCOIC, and he/she tells you not to question travel claims submitted by this particular Marine?

Discussion: If you continue to suspect that whatever is going on with the travel claims is either illegal or “wrong”, you have a duty to report it. If you suspect your SNCOIC is involved, you do have other avenues to report suspected fraud within your unit and outside your unit. Possible sources within your unit are the chaplain or unit legal section or even Request Mast, on the basis you were being told to do something illegal. (If the Marine is filing a false claim, he could be charged with violating the UCMJ). Another possible resource outside of your unit is the command Inspector General (IG). Do not attempt to investigate the situation further as only the commanding officer can order a formal investigation into the situation. Your responsibility is to report the situation to the chain of command. Avoiding or looking the other way when you suspect there has been a violation of the UCMJ compromises your own integrity and is not in keeping with our core values.

Applicable references: DoD 5500.7 R, Joint Ethics Regulations; NAVSO P-6034, Joint Federal Travel Regulations (JFTR); MCO 1700.23F, Request Mast; Manual for Courts-Martial (M.C.M.) Article 107. False Official Statement, Article 132. Fraud.

Case 4. Surrogate Parenting; Honor; Fraud

You are a platoon sergeant in an infantry company preparing for deployment. One of your corporals, otherwise a hard charger, squared-away Marine, has mentioned that he and his wife are having financial difficulties. They have over \$10,000 in credit card debt. As you pass by his work center at the end of the day, you notice a local newspaper with the following add circled: "Surrogate Mothers Wanted! Up to \$20,000 in Compensation." You know that military wives are very attractive candidates for surrogate agencies because of TRICARE's health insurance.

You ask the corporal about it the next day. He becomes agitated and tells you it's none of your business what he and his wife do in their personal lives.

Questions

1. What, if anything, do you do?

- a. Sit down with the Marine (with or without his spouse) and help plan a budget before the upcoming deployment.
- b. Order him not to answer the newspaper advertisement.
- c. Order him to speak to the Chaplain about the surrogacy plan.
- d. Nothing, let it go.

Correct Answer: a

Discussion: Poor financial planning or budgeting can be detrimental to a Marine and his/her family. Counseling the Marine and his spouse may help them to get on track with their finances. If money is an issue before a deployment, it is almost guaranteed to be an issue throughout the deployment and potentially worse upon the Marine's return. In some cases, excessive debt can prevent a Marine from being ready to deploy which can ultimately affect the entire unit. If you can't provide financial guidance, the base Marine Corps Community Services can help. They can assist you and your Marines with financial counselors in preparation for deployment or as a preventative financial planning measure anytime.

2. Is this, the financial problems and possible surrogate pregnancy for profit something you should be concerned about?

- a. Yes.
- b. No, it's his family and none of my business.
- c. No, as his platoon sergeant, I'm only responsible for the Marine's training and development. I can't do anything about his spouse or finances.

Correct Answer: a

Discussion: As the Marine's platoon sergeant, it is your responsibility to be concerned about the whole Marine. Financial issues affect the Marine's performance and deployability, which in turn affects the unit. As for the surrogate pregnancy money solution, that can be a sensitive issue for anyone, based upon personal, moral or religious beliefs. It might help to involve the Chaplain in this situation. Currently, there is not a Marine Corps Order or any other type (Navy, DoD) order that specifically prohibits surrogate pregnancy. This could change due to the increased popularity and the potential burden on TRICARE. Regardless, surrogacy is not necessarily something that should be looked at as a solution to financial troubles. The Chaplain could provide some guidance on how to approach this issue. If one Marine is considering it, there could potentially be more than you are unaware of yet.

3. If a Marine spouse does become a surrogate and uses TRICARE benefits to pay for the medical care and birth, is this fraud?

- a. No.
- b. Yes.

Correct Answer: TBD

Discussion: Currently there is no law preventing surrogate military spouses from using TRICARE benefits for medical care and delivery of a child they carry in exchange for monetary compensation. This may change as more and more military spouses become surrogates. Currently, TRICARE reserves the right to seek repayment from a military spouse who has been paid to be a surrogate. With the possibility that following a surrogate pregnancy, TRICARE could charge the woman for all medical care provided for the pregnancy, it hardly seems to be a good way for Marine families to get out of debt.

4. Would you feel differently if the Marine was female and considering the surrogate pregnancy herself? Why?

Applicable references: NAVMC Directive 1500.58, Marine Corps Mentoring Program (MCMP) Guidebook; MCO 1500.58 Marine Corps Mentoring Program (MCMP); MCO 1610.12, Marine Corps Counseling Program; MCO P1700.24B, Marine Corps Personal Services Manual.

Case 5. Alcohol use/abuse; Sexual Harassment

You are an instructor at a SNCO academy. You work with another instructor who is very popular with the school staff. Over time you become good friends.

After several months, you begin to suspect that he has an alcohol-related problem. Although never late for work, he always seems exhausted in the mornings and his eyes are often bloodshot. After lunch, his eyes are often glassy and he keeps a large bottle of mouthwash in his desk. Several times, when working late, he was giddy and his breath smelled of alcohol. Concerned that he might have an alcohol related problem, you approached him, but he denied having a problem. You let it go.

A few weeks later, during a course party, a few students recount some stories about the same instructor's recent behavior. They give evidence that, on more than one occasion, he appeared at the barracks after hours drunk and seeking sexual favors.

Questions

1. What do you do?

- a. Notify the SACO (Substance Abuse Control Officer).
- b. Speak to the instructor again about your concerns, and offer to help..
- c. Nothing, Marines work hard, play hard. Besides, it hasn't affected his performance.

Correct Answer: b

Discussion: Although technically his performance has not been affected (missing work, drunk on duty), there is obviously a questionable perception of this instructor among the students which explains their comments during the course party. Additionally, you had noted some things that weren't quite right prior to the students sharing their stories. The best thing you could do first is approach the Marine. You need to find out from him if he needs/wants help. There may be more than one issue contributing to his alcohol use, marital or financial problems, or depression are some possibilities. If he is unwilling to talk to you in detail, there are resources available through the command, base and (in most cases) surrounding community. The Marine Corps Community Services (MCCS), can assist as well as your unit SACO, Chaplain, medical/BAS, or civilian entities (AA, counselors).

2. Would getting help for an alcohol-related problem ruin the instructor's career?

- a. Absolutely. Once a Marine admits to an alcohol problem, his career is over.
- b. No, not if he successfully completes counseling/treatment for his condition.

Correct Answer: b

Discussion: If a Marine seeks assistance or treatment for alcohol abuse or addiction, and successfully completes the treatment, the chances are very good for him/her to have a successful career. However, if a Marine doesn't seek help until after he/she has gotten into trouble (NJP, DUI/DWI) the chances of not harming their career are lessened. So, it is very important for leaders to assist a Marine who might be struggling with alcohol as soon as possible. The ultimate goal of the Marine Corps alcohol abuse/addiction treatment program is the rehabilitation and retention of Marines.

3. What about the students' stories? Do you have a responsibility to do anything with the information about the instructor's drunken visit to the barracks?

- a. Yes, he should be charged with violating the UCMJ.
- b. Yes, I need to confront the Marine about his drinking because it is now affecting how the students look to him as an instructor.
- c. I need to report it to the chain of command.
- d. No, he was just having fun. I don't think he seriously did or said the things the students claim. Or, if he did, he was just joking.

Correct Answer: b and c

Discussion: The instructor denied any alcohol problems. However, with the students' stories, it appears that there might be a real issue. You can't order the Marine, since he is a fellow instructor, to seek help. But you can and should report it to higher if he is still unwilling to admit that his drunken behavior is affecting the unit. If the students see him as the drunk Marine who came to the barracks, they will have a difficult, if not, impossible time accepting him as their instructor, teacher, and mentor.

The reality is it is only a matter of time before the incident comes to the attention of the command. Whether it is you who reports it or a Marine who felt uncomfortable or threatened by the situation the command needs to know about it. Any situation which occurs that ultimately would reflect poorly on the command needs to be reported immediately to prevent any further impact on good order and discipline of the unit.

4. Do you think the instructor's alcohol use has had an impact on the unit? Why?

Applicable references: SECNAVINST 5300.28D, Military Substance Abuse Prevention and Control; NAVMC 2931, Marine Corps Drug and Alcohol Abuse Prevention and Treatment Programs; MCO P1700.24B, Marine Corps Personal Services Manual; MCO 1500.58 Marine Corps Mentoring Program (MCMP); MCO P5800.16A, Marine Corps Manual for Legal Administration (LEGADMINMAN).

Case 6. Unplanned Losses; Leadership; Pregnancy

You are a sergeant in a supply section of a logistics company preparing for deployment. Your unit has just returned from the field following its final pre-deployment work ups. As you are cleaning and packing up your gear you overhear a couple of your lance corporals (LCpl) complaining about going to Afghanistan for seven months. You put it off to normal pre-deployment jitters. Final block leave is coming up and you expect everyone to come back with a good attitude.

Three weeks later you learn that the two LCpl's who had been concerned about deploying are both pregnant. Neither one of them is married. It is unlikely that replacements can be found for them before the unit leaves. Some of the other Marines of the section are upset about their increased work load as result.

Questions

1. What do you do with the two pregnant Marines?
 - a. Counsel them individually.
 - b. Send them to another section, since they can't support the supply section now.
 - c. Nothing, they're deploying with the section.

Correct Answer: a

Discussion: The Marine Corps does not prohibit Marines from having children, nor should a Marine be punished or criticized for doing so. The first thing you should do is speak individually with the Marine in accordance with the MCO on pregnancy and parenthood (see below). Pregnant Marines are non-deployable, but only for a specific time period particular to their pregnancy and post partum recovery. Generally, and with medical personnel's approval, they can continue to train and perform their regular duties up to 20 weeks of pregnancy, to include standing duty. Although exempt from the PFT and organized physical training, pregnant Marines will have a medically approved pt routine throughout their pregnancy. After 28 weeks there are additional duty limitations, allowing the Marine to rest 20 minutes every 4 hours (sitting in a chair with feet up is acceptable) and a 40-hour workweek limit. While an unexpected pregnancy can be difficult to discuss with any Marine, it is important that you do discuss it and the Marine Corps policy. Pregnant Marines are required to make formal notification to the chain of command within two weeks of a confirmed pregnancy. This quick notification ensures the Marine maximum time for a safe pregnancy. Meanwhile, it also allows the unit maximum time to plan for continued training and execution of its overall mission.

2. How do you address the issue with the supply section?
 - a. Bad mouth the pregnant Marines for intentionally getting pregnant to avoid deployment.

- b. Acknowledge the section will be short two Marines for the initial deployment, but keep the focus on preparing for the actual deployment.
- c. Ignore the subject of the pregnant Marines as much as possible.

Correct Answer: b

Discussion: First, before speaking to the pregnant Marines or the section, you should review the official policy. (see references below) Once you've reviewed the policy, it will be easier to speak to both. While the pregnant Marines will not deploy with the section, they usually will be able to continue any work up or preparation until the unit actually leaves. Specific duty limitations are listed in MCO 5000.12E. The fact is the section will be short two Marines for the initial deployment, which is difficult to deal with and needs to be addressed with the entire section so it can focus on the deployment mission and plan for reorganization during the execution of the mission. It would be detrimental to your unit to bad mouth these Marines, as they will eventually rejoin the section following their pregnancies. Complaining about the Marines has no positive effect on the situation; it will only bring morale down, which is detrimental and unproductive for any unit.

- 3. Would you handle this differently if two Marines (male or female) were in some way not medically qualified for deployment following block leave? Why?

Applicable references: MCO 1500.58, Marine Corps Mentoring Program (MCMP); MCO 5000.12E, Marine Corps Policy Concerning Pregnancy and Parenthood; MCO 1610.12, Marine Corps Counseling Program; MCO P1700.24B, Marine Corps Personal Services Manual.

Case 7. Travel Claims; Honesty; Loyalty

You and another Cpl from your unit were sent on a week-long conference on NCO leadership. During your trip, breakfast and lunch were provided daily, however, each evening you were on your own.

Upon return to your unit, you complete your travel claim and send it for reimbursement, claiming only legitimate expenses. A few days later you talk with the other Cpl who is happy to make a few more bucks by claiming full per diem. According to him, it would be difficult to find out that he falsified the claim because it was nowhere written that the meals were provided at government expense. He also thinks he was entitled to these additional funds. He wonders why you didn't do the same thing and hopes you aren't going to make a big deal about it.

Questions

1. What do you do?

- a. Nothing, someone will catch it in the claim process. It's not my responsibility.
- b. Talk to the other Cpl and remind him of the purpose of the TAD- NCO leadership. Give him the opportunity to do the right thing, but let him know you will turn him in if he doesn't fix it.
- c. Report the false claim to your chain of command and/or the travel claim section.

Correct Answer: b and c

Discussion: The fact that the TAD was for a conference on NCO leadership is ironic, since now you will have to make a leadership decision. It would be easiest for you if, once you spoke with him, the Cpl realized his mistake and corrected the claim. However, if he doesn't correct it, you have a duty to do the right thing and report it to the chain of command.

2. Did the Cpl commit fraud when he filed his travel claim?

- a. Yes.
- b. No.
- c. Maybe not, if he didn't like the food that was offered and had brown-bagged it or gotten fast food instead.

Correct Answer: a

Discussion: The Cpl filed a travel claim with information he knew was false, in order to receive money he did not rate for reimbursement and signed it stating it was true and accurate (as all travel claims require). In doing this he violated Article 107 False Official Statement and possibly Article 132, Fraud. Exactly which article is for the legal

personnel to resolve, while your decision is more imminent. The fact is the Cpl did something he knew was wrong and so much as admitted it to you right after attending a conference on NCO leadership. Whether he liked the food offered or not does not matter. If the Cpl made a choice to purchase or bring food at his own expense, that was his choice. The government should not reimburse for meal expenses that were not authorized.

3. Would your opinion of this Marine be affected by this situation?

- a. No every Marine deserves a little payback from the government.
- b. Yes, I would question his integrity and whether he was trustworthy.
- c. I don't know, maybe he really needed the money.

Correct Answer: b

Discussion: This situation should make you question this Marine's integrity and trustworthiness. In reality, how much money does he stand to "make" from this travel claim? Twenty, maybe thirty dollars a day is probably the most he would receive in addition to what he would have been authorized from this TAD. So, for that small amount of money, this Cpl compromised his integrity. No amount of money is worth one's honor, but to give it away for such a small amount of money is cause to look at who this Marine really is, what does he stand for? If he really has financial problems, there are other, legal and honorable solutions available to him.

4. If the Cpl does not correct the false claim after you speak with him, what would you think/do?

- a. He should get caught. Maybe he'll brag about it again to the wrong person.
- b. If the travel claim section didn't catch it, shame on them. I'm not getting involved.
- c. I will have to speak up.

Correct Answer: c

Discussion: The claims section might catch it, but only after some time has passed. Regardless, that does not diminish the responsibility you have as a Marine and a leader to speak up. Justice, judgment, courage and integrity are just a few of the 14 Leadership Traits that can guide you in this situation. You can report the false claim to the travel section and/or your chain of command.

5. How would you feel about the fact that "He wonders why you didn't do the same thing and hopes you aren't going to make a big deal about it."?

Applicable references: NAVSO P-6034, Joint Federal Travel Regulations (JFTR); Manual for Courts-Martial (M.C.M).

Case 8. Unplanned Pregnancy; MSG Duty; Abortion

You are a sergeant, and an instructor at the Marine Corps Security Guard (MSG) Program. MSG Marines sign a contract on joining the program that is designed to protect them from relationships that may make them vulnerable while serving as security guards at embassies and consulates around the world. Sergeants and below must be single and not have any children upon joining the program and agree not to marry or have children during their three year tour. In addition, females cannot become pregnant since there may not be adequate medical facilities for delivery or child care in the posts they serve.

One of your female Cpl's assigned to the program comes in to tell you that she is pregnant. The father is her long time boyfriend, but she has not told him yet. She feels she has "let down the Marine Corps" with this unplanned pregnancy. She doesn't know what to do.

Questions

1. How do you initially counsel this Marine?
 - a. Encourage her to have an abortion.
 - b. Encourage her to get married.
 - c. Send her to medical to confirm the pregnancy.
 - d. Criticize her judgment.

Correct Answer: c

Discussion: The first thing that needs to happen is for the pregnancy to be confirmed by medical personnel. Once that is done the Marine is required to notify the command in writing of the pregnancy. While she has personal decisions to make regarding the pregnancy, she must notify the command of her pregnancy within two weeks of confirmation. This is not intended to pressure Marines in their decision-making process, rather, to ensure the best opportunity for a healthy pregnancy and timely personnel planning issues for the unit. This could be particularly difficult in special duty billets, such as MSG billets, which is why Marines must agree to the parenthood regulations when applying to MSG school/duty.

2. Once the pregnancy is confirmed by medical personnel, should you advise her on whether or not to have the baby?
 - a. Yes.
 - b. No.

Correct Answer: b

Discussion: While your intentions may be good (looking out for the Marine's career or applying your own personal beliefs), it is best to not directly advise a Marine on whether or not to end her pregnancy. If the Marine feels conflicted you can listen, or recommend they speak with medical counselors or a chaplain. But since the Marine is currently on MSG duty, these might not be readily available. So the best you can do is counsel without making any definitive statements that the Marine should or should not have the baby or an abortion.

3. How do you advise the Marine on her future career?

- a. Present the two possible scenarios for her immediate future. (one if she has the baby and one if she has an abortion).
- b. Avoid discussing it. I can't help this Marine without judging her.
- c. Tell her to get out of the Marine Corps.

Correct Answer: a

Discussion: The best you can do for this Marine is to honestly present to her the reality of the situation. While it may be difficult to get past your own opinions or personal beliefs, you have to in order to properly advise your Marine. There are two immediate futures for this Cpl.

She can complete her pregnancy. In which case, she will be transferred to a non-MSG unit due to the restrictions of MSG duty. She will have the baby and six months after she completes her postpartum recovery she will return to full duty and once again be deployable. However, she will not be eligible for MSG duty if she is a single parent, or if she gets married. Only staff noncommissioned officers and above are authorized to have a spouse or children and fill MSG billets.

The other alternative is that she has an abortion, in which case she could possibly remain in her current billet. A major issue to consider in this scenario is whether there is adequate legal and safe medical care for the purpose of ending the pregnancy. Due to the fact the Marine is currently serving in an MSG billet, this might not even be possible. She may need to return to the US in order to accomplish this and perhaps may lose her current position due to operational requirements to have the billet filled in her absence. She could always request reassignment in the next available MSG billet for which she is qualified, once she is no longer pregnant and fully deployable.

Regardless what she decides, there will be challenges for the Marine and the unit due to the very nature of the current duty location.

Applicable references: MCO P1326.6D, Special Duty Assignments Manual; MCO P1700.24B, Marine Corps Personal Services Manual; MCO 1500.58, Marine Corps Mentoring Program(MCMP); MCO 1610.12, Marine Corps Counseling Program; MCO 5000.12E, Marine Corps Policy Concerning Pregnancy and Parenthood.

Case 9. Contractors; Professionalism; Gifts

You are a sergeant working at Marine Corps Recruiting Command. You are responsible for both print advertising and the purchase of small consumable items with the Marine Corps logo on them for “give-aways”. The items are used by recruiters throughout the country for various outreach events.

Some of the responsibilities of your position include working with and contracting with various outside companies. Your work requires meeting with company officials in order to discuss requirements, costs, and so on. During one such meeting with a vendor the negotiations are difficult and taking longer than expected. The contractor suggests stopping for the day and picking up again in the morning. He then invites you to join him for dinner at a very nice restaurant, on him, and offers you front row tickets for that night’s basketball game, and your favorite team is playing.

Questions

1. What should you say/do?

- a. Accept the invitation, but insist on paying for your meal and face value of the tickets.
- b. Accept the dinner, but decline the basketball tickets.
- c. Respectfully decline the offer.
- d. Accept the invitation to both.

Correct Answer: c

Discussion: Section 2-100 of the Joint Ethics Regulation states Federal employees are forbidden from soliciting, coercing, or accepting gifts from a “prohibited source.” A prohibited source is defined as, “*(a)ny entity or person who is seeking official action from a federal employee or a federal agency; is doing or seeking to do business with the agency; or is regulated or substantially affected by the agency, and gifts offered because of the employee’s official position*”. The contractor is a prohibited source, since he is currently in negotiations with the Marine Corps for future business. The meal and tickets are “gifts.” A gift is officially defined as, “*anything of monetary value*”.

Since you are in negotiations with the contractor there is a possibility that if you accepted the dinner and tickets, it may appear as though you were getting preferential treatment from the contractor in order to resolve any conflicts with the ongoing negotiations.

2. What if the negotiations were complete prior to the contractor’s offer? Would it be ethical to accept, since the contract negotiations were over?

- a. Yes.
- b. No.

Correct Answer: b

Discussion: As a result of the business relationship, the Marine Corps is “*substantially affected by the agency.*” (DoD 5500.7R, Joint Ethics Regulations) The contractor’s company provides items utilized throughout the country by Marine Corps Recruiting Command units (recruiters, I&I’s). Therefore, any gift from the contractor is prohibited, regardless of whether or not the contract had been settled. The contractor will continue to be a prohibited source, just as you, the sergeant will continue to be a representative of the Marine Corps.

Applicable references: U.S. Constitution: Article I, Section 9, Clause 8; DoD 5500.7R, Joint Ethics Regulation (JER), Section 2-100; SECNAVINST 4001.2H Acceptance of Gifts; SECNAVINST 1650.1H Navy and Marine Corps Awards Manual; OPNAVINST 4001.6 (series).

Case 10. Proselytizing; Undue Command Influence

You are a sergeant stationed in Okinawa. You are single and live in the barracks. Every Sunday a Master Sergeant (MSgt) comes through the barracks and invites Marines to come to an off-base church with him. He displays what can only be described as a zealous mannerism which doesn't take "no" for an answer. He practically orders the young Marines to get up, get dressed, and march outside to a van that will deliver them to the church. While some of the Marines seem to enjoy his boisterous and energetic zeal, it is clear that other Marines do not. When you respectfully confront the MSgt about his apparent proselytizing and pressuring of the junior Marines he firmly denies any wrong-doing and wonders aloud whether there is any hope for your own salvation.

Questions

1. Is the MSgt doing anything wrong?

- a. Yes.
- b. No.

Correct Answer: a

Discussion: The MSgt may have what he believes to be good intentions for the Marines living in the barracks, but his method is wrong. Chapter 3 of the Joint Ethics Regulations provides strict guidelines for all DoD personnel, which forbid the "*endorsement of non-federal entities, events, products, services or enterprises*" to persons junior in rank, grade or position or from endorsing such groups in their official capacities. The fact that the Marines knew the MSgt was a senior SNCO who had come to the barracks to transport them to an off-base church service/event and all but ordered them to participate, violates the ethics regulation. The MSgt abused his position and authority as a senior Marine to obligate these Marines to participate, whether they wanted to or not.

If the MSgt felt strongly about occupying the Marines' time, he should have utilized approved methods to publish such opportunities. The command or base public affairs program will ensure the information is published properly and legally so as not to place the Marines in the uncomfortable position of being pressured or obligated to attend any off duty events (recreational or religious in nature).

2. What is the Marine Corps policy on an individual's religious practice?

- a. Marines are always free to practice their faith.
- b. Marines can only practice their faith in a formal setting. (For example, in a chapel or synagogue.)
- c. Marines can voluntarily practice their particular religion/faith in as much as it does not have a negative impact on the good order, discipline and morale of the unit.

Correct Answer: c

Discussion: Secretary of the Navy Instruction 1730.8A states, “*Department of the Navy policy is to accommodate the doctrinal or traditional observances of the religious faith practiced by individual members when these doctrines or observances will not have an adverse impact on military readiness, individual or unit readiness, unit cohesion, health, safety or discipline. . . Accommodation of a member’s religious practices cannot be guaranteed at all times but must depend on military necessity. Determination of necessity rests entirely with the commanding officer.*”

Additionally, the Marine Corps Order on command religious programs (MCO 1730.6D) requires that all Marines’ participation in religious programs be “voluntary” versus involuntary in nature.

In this situation, the MSgt was not allowing for the voluntary choice of each Marine. The Marines felt compelled to attend church services due to the MSgt’s rank and implied authority. In reality the MSgt did not have any authority to demand the Marines participate in any religious services.

3. Did you do the right thing in respectfully confronting the MSgt? What, if anything should you do next?

- a. Yes, I did the right thing, and now I have to report the ethics violation to my chain of command.
- b. Yes, I did the right thing, and now I have to report the ethics violation to the command/installation Inspector General (IG).
- c. Yes, I did the right thing, and now I should notify barracks duty NCO/SNCO.

Correct Answer: a, b, c

Discussion: Any of the above actions would fulfill your obligation to report the incident(s). Chapter 10 of the JER specifically lists entities/offices for all DoD employees to report suspected ethics violations.

- “a. *The DoD employee’s Agency Designee;*
- b. The suspected violator’s Agency Designee;*
- c. The head of the DoD Component command or organization;*
- d. Any Ethics Counselor;*
- e. The DoD Component’s IG;*
- f. The DoD Component’s criminal investigative office; or*
- g. The DoD hotline or DoD Component hotline.”*

Applicable references: First Amendment, US Constitution; DoD 5500.7 R, Joint Ethics Regulations (Chapter 10 lists reporting procedures) (available online at www.dod.mil/dodgc/defense_ethics/ethics_regulation/jer1-4.doc); SECNAVINST 1730.8A, Secretary of the Navy Instruction on the Accommodation of Religious Practices; MCO 1500.58, Marine Corps Mentoring Program; MCO 1610.12, Marine Corps Counseling Program; MCO 1700.23F, Request Mast; MCO 1730.6D Command Religious Programs in the Marine Corps.

Case 11. PTSD; Reckless Behavior; Loyalty

You are a corporal working in the logistics section of a garrison command. Your roommate of the past two years, a fellow corporal, has just recently returned from a seven month individual augment (IA) tour to Iraq, where he was attached to an infantry battalion. During the deployment, he experienced several close calls due to numerous improvised explosive device (IED) detonations. Although he was never seriously injured in any of these incidents, on one occasion, the turret gunner in his vehicle (a close friend from boot camp) was killed by an IED blast.

Since returning from deployment, your roommate has spent a tremendous amount of time and money on his personal vehicle, a silver BMW. Much of his effort has been to increase the vehicle's performance, including the addition of racing tires and modifying the suspension to improve its high-speed handling. In fact, when not at work or spending time on his BMW, he passes the time by posting pictures of his car on his personal web page. A few days ago, he showed you some of his more recent photos and the captions. One appeared to be a self-portrait of him driving; the speedometer is visible and indicates a speed of 110 miles per hour. The caption reads "can't ticket what you can't catch".

This morning the following newspaper article caught your attention:

Police Believe Fatal Crash Linked to High-Speed Race¹

An area man died last night after losing control of his car in what police believe was a high-speed race along the Beltway.

David M. Smith, 24, of Anytown, died after his Mitsubishi Lancer left the roadway at the Frontage Road exit on the southbound Interstate and struck a tree at 11:17 p.m. yesterday. He was pronounced dead at the scene. Smith's Mitsubishi is believed to have been racing with a 2004 to 2007 silver or white BMW, said Sgt. Terry Johnson, a spokesman for the State police.

Police received multiple calls from motorists that two vehicles were racing along the outer loop of the Beltway. One witness told police she was driving in the right lane when both vehicles passed her on the right shoulder at speeds she estimated in excess of 100 miles per hour, Johnson said.

When the vehicles reached the Frontage Road exit, the BMW continued on the Beltway, the Mitsubishi went onto the exit ramp, then crashed. Police are continuing to search for the other vehicle. "If this is determined to be a race the other driver could still be charged with hit and run," Johnson said.

¹ Partially based on an 11 December 2007 *Washington Post* article by Joshua Zumbrun:
Police Believe Fatal Beltway Crash Linked to High-Speed Race

You have not seen your roommate since yesterday afternoon.

Questions

1. What are some of the signs and symptoms of post-traumatic stress disorder? What can / should you do if you, one of your friends, or subordinates are suffering from PTSD? What resources are available?
2. What should you do if a peer or subordinate is engaging in reckless behavior like street racing? What are the second and third order effects of this type of conduct?
3. Based on your roommate's recent behavior, the improvements to his vehicle, and the newspaper article, you believe he may be the driver that the police are looking for. What do you do with the information you have? Do you notify the police, your chain of command, or keep it to yourself?

Applicable references/resources: Marine Corps Community Services (MCCS) Combat Operational Stress Control (COSC) Branch is a good place to start, see their website at <http://www.usmc-mccs.org/cosc/index.cfm>. COSC's "Leaders Guide for Managing Marines in Distress" is a very useful tool that is frequently updated and available for download online at the following address:
<http://www.usmc-mccs.org/LeadersGuide/Deployments/CombatOpsStress/index.htm>.

Case 12. Homosexual Inquiry; “Don’t Ask, Don’t Tell” Policy

You are a sergeant, forward deployed as the administration chief for a Marine Expeditionary Unit (MEU). Your unit was transiting home following a grueling eight-month long deployment that included operations in Iraq. However, three days ago the ships were diverted to the Horn of Africa to reinforce a joint unit and possibly conduct a non-combatant evacuation operation (NEO). The length of this extension is undetermined; as a result, emotions are strained, leaving many Marines and sailors frustrated and upset.

This morning, a lance corporal from the battalion landing team’s (BLT) admin section approaches you on the flight deck following unit physical training. Based on the nature of your assignments and the length of the deployment, you have gotten to know this Marine fairly well. He is quiet and reserved, but very professional. On occasion, you have witnessed some of the other Marines picking on him, mostly comments about his reluctance to shower or change his clothes in their presence. Today, he appears nervous and indicates that he wants to speak to you in private.

You agree to meet with the Marine before lunchtime. His eyes are red, and it appears that he has not slept well for a few days. He stutters and anxiously glances around your office spaces (everyone else has gone to lunch), so you assure him that you are alone. The lance corporal relaxes somewhat, and proceeds to stammer that he is bisexual. Moreover, he is afraid for his safety, claiming that several of the Marines from the headquarters company know about his sexual orientation and have threatened to “beat the gay out of him”. He also says that his staff noncommissioned officer in charge (SNCOIC) is aware of the situation, because last night the staff sergeant allegedly told him “we both know you are just putting on an act so you can get off the ship. In fact, I’m so confident that you are full of it that I will “drop trou” right now so you can prove what a big fag you are. Unless you are willing to put your money where your mouth is, there is no way you are leaving this ship”.

Questions

1. Have you violated the “Don’t Ask, Don’t Tell” policy by talking to this Marine?

Discussion: No. Section 654 of Title 10 of the United States Code outlines the policy on homosexuality in the armed forces. For Marines, further amplifying information is contained in Chapter 6 of the Marine Corps Separations Manual (SEPMAN), as well as Marine Administrative Messages (MARADMINS) 014/00 and 025/00. Department of Defense policy is really “don’t ask; don’t tell; don’t pursue; and don’t harass”. Sexual orientation is a personal matter, so it is very important to understand that the law prohibits homosexual **conduct**, NOT sexual orientation. Examples of homosexual or bisexual conduct include homosexual or bisexual acts; statements by a member that he or she is homosexual or bisexual; or homosexual marriage or attempted homosexual marriage. In this situation, you were asking the Marine about his welfare and what was upsetting him, not his sexual orientation. His statement that he is bisexual constitutes

evidence of prohibited conduct, and may be considered by the commanding officer in determining whether or not further action is required. If the CO determines that the Marine is bisexual, then the Marine must be processed for administrative separation.

2. What should you do with the information you have received?

You should report this information to the commanding officer as soon as possible.

3. Who can properly direct an investigation of this situation?

Discussion: Assuming there is credible information that the Marine is in fact bisexual or homosexual, under MARADMIN 014/00 and 025/00, only COMMANDERS can conduct or direct a preliminary inquiry, after consulting with the staff judge advocate (legal advisor to the commanding general).

4. What should you do about the Marine in light of the alleged threats?

Discussion: Commanders have a responsibility to protect their Marines. Because the Marine claims he is being threatened because of his sexual orientation, you need to pass this information on to the commander immediately so that he can take steps to investigate the threats and safeguard the Marine.

5. What if the commander believes the Marine made these statements in order to avoid the rest of the deployment?

Discussion: As a general rule, when a Marine states that he or she is a homosexual or bisexual, little further investigation is required. The commander and investigating officer can test the sincerity of the statement by questioning the Marine, others who heard the statement, the Marine's immediate chain of command, and anyone that the Marine suggests the investigating officer talks to. If the commander still suspects that the individual made the statements to avoid deployment or further service, he will need approval from the Secretary of the Navy in order to conduct a more substantial investigation (see MARADMIN 014/00 and consult with the staff judge advocate for more information about this process).

Applicable references: Section 654 of Title 10 of the United States Code; Chapter 6 of the Marine Corps Separations Manual (SEPMAN); Marine Administrative Messages (MARADMINS) 014/00 and 025/00 which explain the Marine Corps Homosexual Conduct Policy.

Case 13. Fundraising; Maltreatment; Loyalty

You are a corporal that has recently joined a Marine command located aboard an Army installation. This detachment provides instruction and administrative support for the large number of enlisted Marines and officers attending formal MOS training at the base.

Based on your observations, the detachment is a tight knit group of officers and enlisted Marines that take tremendous pride in their mission and support of the students. Morale seems higher than at your last command, in part due to the normalcy of the hours and stability provided by the class schedules. Although both courses of instruction include significant amounts of field time for the students and staff, the training is well-organized and there appears to be reasonable amounts of time between the major training events.

The detachment's senior enlisted Marine is a motivated, squared-away 1stSgt who leads by example. The Marines in the office respect him, and the Officer in Charge (OIC), a major, seems to rely heavily upon his advice.

Now that your PCS move is complete and you have had time to square yourself and your family away in base quarters, you are getting more engaged in the detachment's day to day operations. In fact, last week was your first opportunity to work directly with the 1stSgt, who had asked you to assist him with a class on customs and courtesies.

The 1stSgt's class was one of the best presentations you have ever witnessed and really motivated all of the students. The majority of the class focused on the origins of the Marine Corps' birthday ball, highlighting the detachment's last two celebrations. At the end of the presentation, the 1stSgt asked you to collect \$10.00 from each of the students (mostly lance corporals and privates first class) as a contribution for this year's ball, and to document the names of any students who declined to contribute. You were a little uneasy about this, because you realized that these students would graduate and report to units in the operating forces well before the ball. As you finished collecting the money and noting the names of the six students who did not provide the \$10.00, you saw the OIC depart the back of the classroom.

Later that afternoon, you asked a fellow corporal, who is also a member of the detachment staff about the class and the fundraising from the students. The corporal just shrugged his shoulders and said, "How else could we afford to have such a great ball every year? Before the 1stSgt got here, we were lucky to have a lousy cake from the PX and some burnt hot dogs; now we go to great resorts and celebrate the Marine Corps in real style. Besides, we include students from the classes in attendance at the time, so it's not like we are ripping everyone off".

A few weeks later, on the day before graduation, you bump into one of the students. You immediately recognize him as one of the six who declined to provide money for the detachment's ball. The PFC seems very upset and has a bandage on his forearm. At first he just glares at you and then starts shouting. He claims that the 1stSgt took him and the

five other students to a plasma collection center and ordered them to contribute, subsequently forcing each Marine to hand over the \$80.00 they received for their plasma.

Questions

1. What are the legal rules on workplace fundraising?

Discussion: Sections 3-210 and 3-211 of the Joint Ethics Regulations (DoD 5500.7-R) contain the rules for fundraising. These rules allow a command to officially endorse certain fundraising campaigns, specifically the Combined Federal Campaign and the Navy-Marine Corps Relief Society. Only these officially endorsed programs can solicit Marines at work.

There are additional rules for private organizations, such as birthday ball committees. These types of organizations are usually limited to the sales of merchandise (like yard sales and bake sales) or services (car washes). Key considerations are that the activities or sales are occasional (not frequent or continuous) and do not directly compete with Marine Corps Community Services (MCCS) programs and services. Of note, units are specifically prohibited from conducting gambling events, raffles, and lotteries to raise funds.

The Marine Corps Birthday Ball is a special event with special rules. Marine Corps Order 5100.31, Marine Corps Ball Funding explains that the ball consists of two “tiers”(official and unofficial) with different funding sources. The order allows units to use appropriated funds (operating and maintenance funds or O&M) to pay for transportation, printing, publication and official ceremony photos.

The order prohibits units from using O&M funds to pay for the guest of honor and cake expenses, so units must either use nonappropriated funds(social fund money provided by MCCS to each unit) or small unit funds that are sourced through the occasional sales of merchandise and services. Gifts and donations to the small unit fund can only come through the voluntary contributions of unit members; for example, it is illegal to solicit gifts of money, food, beverages and supplies from local businesses so they can “show their support” for the Marines or receive free advertising in the ball program.

Even if a unit has legally established a fund to cover the expenses of the unofficial portions of the ball, there are some limitations on how to collect money. Workplace solicitations must be completely voluntary, so the following practices are prohibited:

- solicitation by supervisors
- setting 100 percent participation goals, mandatory personal goals or quotas
- using contributor or non-contributor lists for any purpose other than the routine collection and forwarding of donations
 - counseling or grading individuals on the size of their donation or failure to donate
 - using special liberty as an incentive to donate to the fundraising effort

2. What can / should you do about the 1stSgt's actions? Should you talk to the OIC?
What if the OIC is directly or indirectly supporting the 1stSgt's actions?

3. What if anything can you do for the Marines?

Applicable references: Sections 3-210 and 3-211 of the Joint Ethics Regulations (DoD 5500.7-R); Marine Corps Order 5100.31, Marine Corps Ball Funding.

Case 14. Conscientious Objector

Your unit has assumed duties as the Air Contingency Battalion (ACB) for a period of six months. In this capacity, the battalion will be part of a larger Marine Corps Air-Ground Task Force (MAGTF) that stands ready to provide rapid, world-wide, air, ground and combat service support capability in the case of a crisis.

As a newly promoted sergeant and squad leader, it is your responsibility to train and prepare the Marines assigned to you. In order to meet the mission requirements, your battalion has received a number of augments from other local units, including the base's Headquarters Battalion.

Private First Class Jones is one of many augments from Marine Corps Base that have joined the battalion. A recent graduate of Marine Combat Training (MCT) and the motor transport mechanic's course, he had spent only a few days with the Base Motor Transport section prior to the transfer to your squad. The Marine seems sullen and distracted. Since joining your unit, he incessantly complains about the training schedule and having to remain in the immediate area. He also spends a large amount of time talking on the phone and sending text messages to his girlfriend. Based on what you have been able to find out, she may be pregnant. In any event, this Marine has made it abundantly clear, through his words and actions that he does not want to be a part of your squad or the ACB.

Fortunately, you also have Lance Corporal Rogers. Besides you, Rogers is the only other combat veteran in the squad. He performed well during the last deployment to Afghanistan, successfully evading a complex Taliban ambush and personally saving several Marines in the process; accordingly, you appointed him to be a fire team leader. When you were interviewing him for the team leader position, he mentioned that since high school, he has consistently attended religious services, serving as a lay minister and leading faith-based discussions. Although his tactical performance seems unchanged, since returning from deployment, Rogers seems more quiet and detached than before, spending much of his free time on his own, reading his Bible. On the few occasions when he does speak, he talks about the importance of his faith, and he frowns when some of the other Marines use profanity.

Two hours ago, the platoon sergeant announced that rebels were closing in on an important capital city in western Africa and that the ACB was deploying to provide security for the US embassy as part of a non-combatant evacuation operation (NEO). LCpl Rogers approached you, appearing confused and upset. When you asked him what is wrong, he said that he has no problem with deploying with the unit, but that his faith tells him it is wrong to take the life of another, and he that he will not carry a rifle. Before you could figure out what to do about Rogers, PFC Jones burst into the squad bay screaming that he cannot deploy because he objects to all war and won't be a "pawn of the imperialist pigs".

Questions

1. What are the rules on conscientious objectors? What is the process for assessing the validity of a conscientious objector claim? If someone is formally declared a conscientious objector, what happens?

Discussion: Refer to Department of Defense Instruction (DoDI) 1300.06 of 5 May 2007 and Marine Corps Order 1306.16E of 21 Nov 1986. The DoDI defines conscientious objection as “a firm, fixed and sincere objection to participation in war in any form or the bearing of arms, by reason of religious training and/or belief.” The DoDI then establishes two categories of conscientious objectors. The first category, a Class 1-0 Conscientious Objector, is defined as a “member who by reason of conscientious objection, sincerely objects to participation in military service of any kind in war of any form.” The second category, Class 1-A-0 Conscientious Objector is “a member who, by reason of conscientious objection, sincerely objects to participation as a combatant in war in any form, but whose convictions are such as to permit military service in a non-combatant status.”

Marine Corps policy is that “conscientious objection does not exempt a Marine from active military service.” The burden is on the service member to present evidence “which demonstrates a sincere opposition to war in any form based upon religious training and belief.”

In order to be classified as a conscientious objector, a commander with special court-martial convening authority must appoint a hearing officer (captain or higher) to investigate the service member’s claims. In order to qualify, the service member must demonstrate:

- (1) that they are conscientiously opposed to participation in war in any form;
- (2) that their opposition is founded on religious training and belief; and
- (3) that their position is sincere and deeply held.

The investigating officer’s completed report routes through the chain of command for review and endorsement, beginning with the commander who directed the hearing. The report continues on to the first general officer in the chain of command who shall endorse the report and provide a final recommendation to the Commandant of the Marine Corps for a final determination.

As noted above, there are two categories of conscientious objector. Marines that qualify as 1-0 Conscientious Objectors are separated administratively. Marines categorized as 1-A-0 Conscientious Objectors may be retained. They will not be assigned to combat or combat support occupational fields. Instead, they will be assigned to appropriate duties via on-the-job training, within the combat service support occupational fields, or may also be separated from the service.

2. How do you remain sensitive to individual's spiritual and moral preferences? Can you balance their spiritual and moral needs and still accomplish the mission?

Applicable references: DoDI 1300.06, Department of Defense Instruction on Conscientious Objectors; MCO 1306.16E, Conscientious Objectors.

Case 15. Off-Duty Employment; Good Order and Discipline; Leadership; Loyalty

You are a newly-promoted corporal assigned to a data-communications platoon. Your section is led by a no-nonsense, extremely professional and competent female sergeant who sets the example in all areas from physical fitness, to MOS knowledge, and customs and courtesies. A veteran of two combat deployments, she has helped you tremendously with your time management skills, as well as your ability to operate in a deployed environment. You greatly respect her leadership, as well as her ability to manage multiple responsibilities. In addition to her assigned Marine Corps duties, she also holds down a second job at a nearby restaurant while simultaneously taking college classes.

The weekend has finally arrived, and you are looking forward to celebrating your promotion. You and your friends drive approximately an hour north of the base to visit a few of the upscale dance clubs. On the way, one of your friends suggests stopping at a nearby topless dance club (for their buffalo wings, of course). Once inside the club, you do an immediate double take: YOUR sergeant is center stage, performing for the crowd. There is no mistaking the Marine Corps tattoo on her left arm (you have seen it dozens of times at PT). Noticeably, other parts of her anatomy are also visible.

Questions

1. Can Marines have after hour jobs? What are the requirements?

Discussion: Although there are no Marine Corps orders directly on point, Sections 2-206 and 2-303 of the Joint Ethics Regulations (DoD 5500.7-R or JER). Section 2-206 directs all government employees that are required to file an annual financial disclosure statement to obtain prior approval before starting certain types off-duty jobs. Section 2-303(a) gives commanders the authority to prohibit off-duty employment or activities if he or she “believes that the proposed outside activity will detract from readiness or pose a security risk”. Local commands may have their own rules or regulations governing off-duty employment and the approval process.

2. Is there anything illegal about the sergeant’s off-duty job? Is there anything immoral? What is the potential impact on her moral authority as a Marine and NCO?
3. What should you do? Should you talk to the sergeant about this? Should you alert your chain of command?

Applicable references: DoD 5500.7-R, Joint Ethics Regulations (JER).

Case 16. Fraud, Waste and Abuse; Use of Government Resources

You are a sergeant assigned to an installation personnel administration center (IPAC). Your OIC is an energetic, knowledgeable and highly experienced CWO-3. He has amassed a wealth of experience throughout his career and is recognized as the “go to guy” for a wide variety of personnel and administration issues. Furthermore, he has made the most of his Marine Corps experience and the educational opportunities, obtaining a bachelor’s and master’s degree as a result.

For the past few months, he has been teaching a management and leadership course at the local community college, every Tuesday and Thursday evening. You have noticed that from noon until close of business on those days, his office door is locked and he forwards all of his phone calls and e-mails to you. In fact, the only time you see him on those afternoons is when he is making photocopy handouts for his classes.

Today you had to contact the photocopier maintenance company to repair the machine. As the maintenance tech performed an extensive overhaul by replacing the imager and fuser, he noted that less than three months had lapsed since he had performed scheduled maintenance (previously, similar maintenance lasted for 12 to 18 months). A few minutes later, the battalion’s fiscal chief stops by to ask why your section has expended four times the quantity of paper and toner cartridges of all other battalion sections, combined.

Questions

1. What are the rules on the use of government resources? Has the CWO violated these rules? What are the implications?

Discussion: In this case, the CWO has violated two different ethical rules, see Sections 2-100 and 2-301 of the Joint Ethics Regulation (JER) DoD 5500.7R. Section 2-100 refers you to detailed rules contained in the Code of Federal Regulations (5 C.F.R. Part 2635), while section 2-301 specifically addresses the use of communication systems and other federal resources.

5 C.F.R. Part 2635.704 says that *“an employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.”* Government property includes ... *“office supplies, telephone and other telecommunications equipment and services ... automated data processing capability ... [and] printing and reproduction facilities ...”*. Authorized purposes are *“those for which Government property is made available to members of the public or those purpose authorized in accordance with law or regulation”*.

5 C.F.R. Part 2635.705 says that *“... an employee shall use official time in an honest effort to perform official duties”*

In this case, the CWO has been misusing Government property and official time to prepare for the classes he is teaching at the local college. For example, his use of the computer, paper, toner and copy machine violates the rules in 5 C.F.R. Part 2635.704. In addition, he is also wasting official time when he shuts the office doors on Tuesdays and Thursdays to prepare for his classes.

2. What are some of the impacts of the CWO's actions? How does his conduct impact office morale? What does his conduct do to his moral authority? For example, could he effectively discipline a subordinate for conducting on-line trading transactions during the work day? Why or why not?

3. What should you do? How do you report the CWO's actions?

Applicable references: 5 C.F.R. Part 2635, Code of Federal Regulations; DoD 5500.7R, Joint Ethics Regulation (JER).

Case 17. Range Misconduct; Honor; Integrity; Leadership; Loyalty

You are serving as the Company First Sergeant and just completed a week of well-deserved leave. While you were gone, the company conducted annual rifle qualifications. Corporal Hess served as one of the block non-commissioned officers, overseeing the entire evolution. While catching up on a week's worth of e-mails, Cpl Hess approaches you to talk about something that happened on the rifle range last week.

The corporal seems nervous and upset, so you sit down and ask him to explain the situation. He says that the range was pretty uneventful, up until qualification day on Thursday. The Company Gunnery Sergeant, GySgt Brown, has been a multiple-award rifle expert, a streak that started when he enlisted in the Marine Corps a dozen years ago. That streak appeared to be in jeopardy on qualification day however, since the gunny fired so poorly from the 200 and 300-yard lines. The wind had picked up considerably throughout the morning, reflecting full value from left to right in the pits. Meanwhile, back at the 500-yard line, the flag also showed a full value wind in the opposite direction from right to left. As the detail moved back to the 500-yard line, Corporal Hess realized that GySgt Brown needed to score eight out of ten shots in the black to even qualify as a marksman, so there was no way he could qualify as an expert this time around.

Corporal Hess says that it was clear that GySgt Brown was upset and frustrated as they entered their preparation time at the 500-yard line ready benches. At one point, the gunny turned to the shooter on the next relay, a lance corporal from the mortars' section. The lance corporal briefly turned his back to Corporal Hess and the other range officials and reached toward the multipurpose tool on his belt. A few moments later, the gunny called for the armorer to inspect his rifle. The inspection revealed a significant bend in the front sight post, so the gunny received an alibi for that day's shooting. The weather was much better on Friday; GySgt Brown fired expert once again (his twelfth consecutive expert award).

Questions

1. What do you do with the information from Cpl Hess?
2. What are the second and third order effects of GySgt Brown's actions? What are the impacts on his moral authority and standing in the unit? Has he overemphasized his tactical reputation at the expense of his integrity and professionalism?
3. What are the impacts to the lance corporal from the mortars' section? Can the Marine defend himself legally for following the gunny's apparent order to damage the front sight post (or providing the gunny the tool to damage the post)? Is a Marine ever justified in complying with an unlawful order? What should a Marine do when ordered to perform an unlawful act?
4. Would the situation be any different if an officer was involved instead of a SNCO? Should it be?

Applicable references: The Fourteen Marine Corps Leadership Traits, specifically Justice, Judgment, Integrity, and Courage

Case 18. Alcohol Abuse; Sexual Assault; Sexual Assault Reporting

It is late in the fall on Saturday evening at an east coast installation. You are serving as the Duty NCO for the barracks (a sleeping post). It is approximately 0130, and you have just awakened to relieve the Assistant Duty NCO for the next few hours.

As you tour the area, you notice an open door on the third deck of one of the buildings. Because it has gotten noticeably cooler and in order to prevent possible theft, you proceed to the third deck to examine the room. From the catwalk, you can see several beer bottles and cans lying outside of the room. As you reach the door, the smell of alcohol and vomit is almost overwhelming. Despite the poor lighting, you can plainly see three semi-naked males standing near a woman. Her underwear and bra are lying on the floor in a puddle of vomit, and she is sobbing softly. The males are startled by your presence, and two of them grab their clothes and run out of the room through the adjacent shared bathroom spaces.

You recognize the remaining male, a 19 year-old lance corporal from the motor pool who recently completed level three alcohol treatment. He is clearly intoxicated, slurring his speech and struggling to remain standing. You direct him to put his pants back on as you try to help the woman sit up. You notice severe bruises on her arms and wrists, and between sobs you learn that she is married to a deployed gunnery sergeant.

Questions

1. What do you do next? Who do you contact? What do you do with the woman? What do you do with the Marine? What do you do about the other two individuals?

Discussion: Marine Corps Order 1752.5A, Sexual Assault Prevention and Response (SARP) Program of 5 February 2008 contains useful guidance in this area. The order states that “Leadership is the key to sexual assault awareness, prevention, and response. The commander’s role in awareness and prevention is to:

- (a) Establish a climate that confronts the beliefs and values that contribute to behaviors which facilitate sexual assault;
- (b) Establish clear standards for personal behavior, and hold offenders accountable;
- (c) Be keenly aware of and sensitive to the climate in their units;
- (d) Continuously educate their Marines on how to prevent incidents of sexual assault, while also encouraging victims and witnesses to report these incidents when they occur;
- (e) Be aware that sexual assault victims are physically, mentally and emotionally traumatized and wounded.

Because one of the primary concerns and challenges remains the underreporting of sexual assaults, the order provides two types of reporting: restricted and unrestricted.

Restricted reporting allows a sexual assault victim to confidentially disclose the details of his or her assault to specified individuals and receive medical treatment and counseling, without triggering the official investigative process. Restricted reporting is only available to military personnel of the Armed Forces and the Coast Guard.

According to the Department of Defense SAPR homepage, Unrestricted reporting “*is recommended for victims of sexual assault who desire medical treatment, counseling and an official investigation of the crime. When selecting unrestricted reporting, you should use current reporting channels, e.g. chain of command, law enforcement or report the incident to the Sexual Assault Response Coordinator (SARC), or request healthcare providers to notify law enforcement. Upon notification of a reported sexual assault, the SARC will immediately assign a Victim Advocate (VA). At the victim’s discretion/request, the healthcare provider shall conduct a sexual assault forensic examination (SAFE), which may include the collection of evidence. Details regarding the incident will be limited to only those personnel who have a legitimate need to know.*”

<http://www.sapr.mil/HomePage.aspx?Topic=Sexual%20Assault&SubTopic=Reporting%20Sexual%20Assault&PageName=unrestricted.htm>

You have already taken positive action by securing the scene and protecting the apparent victim, while identifying and detaining a potential attacker. Continue to tend to the safety and health of the woman and immediately contact your chain of command and Naval Criminal Investigative Service (NCIS) personnel. You should also contact your unit’s Sexual Assault Response Coordinator, who in turn will work to appoint a victim advocate to work with the woman.

Timely medical involvement will be critical to preserving evidence and determining what happened in this case. NCIS and the victim advocate should help take the woman to a medical facility so that they can conduct a sexual assault forensic examination (SAFE), as well as other tests to determine whether or not drugs or alcohol were involved.

Take affirmative steps to preserve all of the evidence in the room and ensure that no one tampers with the scene. Provide descriptions of the other two males to the investigators. Given the Lance Corporal’s apparent state of intoxication, it is best to allow NCIS to interrogate him about the incident. They will most likely wait until he is sober, to eliminate any concerns that he was too intoxicated to understand any rights advisements. Although you will not conduct the interrogation, pay close attention to his demeanor and record or document any spontaneous statements that he may make. This type of evidence may help identify the other men, as well as help the investigators focus during the interrogation and investigation.

2. What are some of the elements of a command climate (beliefs and values) that contribute to behaviors that may lead to sexual assault?
3. The Commandant’s White Letter 03-05 of 29 Apr 2005, Collateral Misconduct In Sexual Assault Cases, raises a related problem: “many reported sexual assaults involve

circumstances where the victim may have engaged in some form of misconduct (i.e. underage drinking or other alcohol related offenses, adultery,[or] fraternization ...) How does this type of conduct facilitate sexual assault? How can you regulate and deter this type of conduct without “chilling” or deterring victims from reporting assaults?

4. How do you establish clear standards for personal behavior? What are some mechanisms for holding individuals accountable?

Applicable references: Commandant's White Letter 03-05 of 29 Apr 2005; MCO 1752.5A, Sexual Assault Prevention and Response Program (SARP); Department of Defense Sexual Assault Prevention and Response Office (SAPRO) website

<http://www.sapr.mil/HomePage.aspx?Topic=Sexual%20Assault&SubTopic=Reporting%20Sexual%20Assault&PageName=unrestricted.htm>

Case 19. Workplace Fundraising

You are assigned to the crash and fire rescue crew at an air station. Once again it is time for the annual Combined Federal Campaign (CFC), a Department of Defense approved workplace fundraising program. This year, Staff Sergeant (SSgt) Wilson is the section's point of contact for distributing information about the program and coordinating donations.

SSgt Wilson is very enthusiastic about this assignment, consistently reminding Marines about the program and highlighting some of the charitable groups. He spends most of his time talking about the organization that assisted him and his family while he recovered from the effects of a vehicle-borne improvised explosive device (VBIED).

You believe that CFC is a worthwhile effort, but prefer to donate money to your local church instead. When you politely declined to participate in the CFC this year, SSgt Wilson questioned your loyalties, wondering out loud if you cared more about some poor kids in South East Asia than you do about your fellow Marines.

You shrugged off this incident until a few days ago. Although CFC concluded a few weeks ago, SSgt Wilson continues to talk about his favorite charity. Today, one of your Marines, LCpl Benson, approached you to talk about a pay problem. He told you that weeks ago he provided SSgt Wilson a completed allotment form, designating a one-time donation of \$100.00 to a cancer treatment charity. However, when he looked at his most recent leaving and earnings statement, he noticed that he now has an allotment of \$100.00 per month going to the SSgt's favorite charity.

Questions

1. What are the legal rules on workplace fundraising?

Discussion: Sections 3-210 and 3-211 of the Joint Ethics Regulations (DoD 5500.7-R) contain the rules for fundraising. These rules allow a command to officially endorse certain fundraising campaigns, specifically the Combined Federal Campaign and the Navy-Marine Corps Relief Society. Only these officially endorsed programs can solicit Marines at work.

CFC is one of the recognized exceptions to workplace fundraising, so SSgt Wilson's actions were lawful on the surface. However, there are still limitations on how the fundraising is conducted. For example, workplace solicitations must be completely voluntary, so the following practices are prohibited:

- solicitation by supervisors
- setting 100 percent participation goals, mandatory personal goals or quotas
- using contributor or non-contributor lists for any purpose other than the routine collection and forwarding of donations

- counseling or grading individuals on the size of their donation or failure to donate
- using special liberty as an incentive to donate to the fundraising effort

In this case, SSgt Wilson improperly critiqued and humiliated you for your decision not to participate in CFC.

More importantly, it appears the SSgt Wilson has committed fraud, by altering LCpl Benson's allotment to increase the amount donated and changing the designated charity.

2. What can / should you do about SSgt Wilson's actions? Does it make a difference that the money is going to a charity, vice SSgt Wilson's bank account?
3. What, if anything, can you do for LCpl Benson?

Applicable references: DoD 5500.7-R , Joint Ethics Regulations (JER).

Case 20. Unlawful Command Influence; “Chilling Effect”

You are a corporal serving as an assistant section chief of an artillery battery. One of your Marines, a 20 year-old lance corporal (LCpl), is pending a special court-martial for underage alcohol consumption and the attempted theft of a video game system from another Marine’s barracks room.

You have known LCpl Young for two years, including two combat deployments. He had been a good Marine until a few weeks ago. Toward the end of the deployment, his wife sent him an e-mail detailing her adulterous affair with a neighbor, including a link to her personal web site and pictures of her and the neighbor performing various sex acts throughout their on-base quarters. LCpl Young maintained his focus until the end of the deployment, but seemed to fall apart once the unit returned to its CONUS base. On the night in question, the duty NCO called you into work after LCpl Young allegedly got drunk and stumbled into another Marine’s room, attempting to remove the video game system. LCpl Young was apparently too intoxicated to get out of the room, tripping over the wires and knocking over the game system and television in the process. When you arrived, Young was sitting calmly with the duty NCO, shaking his head and muttering about how the “witch had ruined his career”.

Two days ago, LCpl Young asked you and several other Marines in your section to appear as a character witnesses at his upcoming trial. Everyone, except for the section chief, agreed.

This morning, your section chief, a staff sergeant, held a small formation to discuss his leadership philosophy. He spent the majority of the time talking about the evils of barracks theft. “Make no mistake, there is nothing lower than a barracks thief, with one exception: anyone who would go to bat for a barracks thief. Just to make myself perfectly clear, know this: I will personally crush anybody who helps a barracks thief. In fact, come and sign your “non-rec” for promotion right now while I talk to the 1stSgt about running your competency review board”.

Questions

1. What is unlawful command influence? Why is it a problem?

Discussion: Rule for Courts-Martial 104 prohibits anyone subject to the Uniform Code of Military Justice (UCMJ) from attempting *“to coerce, or by any unauthorized means, influence the action of a court martial ...”*. The central issue is one of fairness and impartiality. In order for the verdicts of courts-martial to be followed and respected, everyone involved must believe the system and process is fair and balanced. Put another way, “would the average American citizen lose faith in the military justice system or consider it unfair?”

We all have a duty to ensure that an accused Marine receives all the protection provided by the UCMJ. In this case, the section chief is trying to intimidate and discourage

Marines from testifying on behalf of LCpl Young, depriving him of important information in his defense. It may also have a negative impact on his sentence, if he is convicted of the charged offenses, because the judge and court members may not learn about Young's performance during deployment, or about how his wife's heartless actions may have contributed to his problems with alcohol and self-discipline.

2. How should the section chief have handled this situation? What are some of the outcomes of his "leadership" discussion?

Discussion: The section chief is entitled to his opinion, and is free to testify at the court-martial just like any other witness. By the same token, the other Marines should have the freedom to testify truthfully on LCpl Young's behalf, with no fear of adverse consequences (i.e. reassignment, adverse fitness report of proficiency and conduct marks, additional duties etc). A court-martial is designed to weigh competing facts to arrive at a just conclusion, and it is up to the defense and prosecution to present those facts to the judge and members (jury). The judge makes the final determination about whether the evidence is relevant to the case and admissible under the rules of evidence.

In this situation, the section chief's comments and actions have endangered the fairness of LCpl Young's case, violating the protections established by Rule for Courts-Martial 104 and Article 37 of the UCMJ. The section chief can be charged with a violation of Article 98 of the UCJM, Noncompliance With Procedural Rules (see paragraph c(2)). You and the rest of the Marines should demonstrate moral courage and testify truthfully on behalf of LCpl Young.

Applicable references: Manual for Courts-Martial (MCM), Rule for Courts-Martial 104; Articles 37 and 98 of the UCMJ

Case 21. Extra-Military Instruction (EMI)

You are a Sergeant assigned to a provisional security detachment deployed to a forward operating base in East Africa. One day, you encountered two of your Marines, a lance corporal (LCpl) and a private first class (PFC), standing approximately 20 feet apart and playing a game of catch with a small sledge hammer. As you approached them to order them to stop this foolish activity, the hammer struck the PFC in the face, chipping his front teeth and splitting his lip. The Marine required several stitches and will need reconstructive dental surgery to repair the damage to his teeth. Although the lance corporal is one of your better Marines, you recognized the importance of holding him accountable for his reckless behavior. Concerned that non-judicial punishment or an adverse page 11 entry would prevent him from getting promoted to corporal or possibly re-enlisting in a few months, you offered him a choice between administrative action or an intense physical training (PT) session designed to “teach him a lesson” about leadership and judgment. The lance corporal willingly accepted the PT session, which you conducted later the same day. Proud of how you handled the situation, you informed the 1stSgt about this leadership accomplishment. Instead of congratulating you, however, the 1stSgt pulled out his rights advisement card and accused you of violating Articles 92 and 93 of the Uniform Code of Military Justice. What went wrong?

Questions

1. What is extra military instruction (EMI) and how do you administer it properly?

Discussion: Extra Military Instruction (EMI) is an administrative measure available to **commanders**. EMI is authorized by paragraph 0103 of the JAGMAN:

“Extra military instruction (EMI) is defined as instruction in a phase of military duty in which an individual is deficient, and is intended for and directed towards the correction of that deficiency. It is a bona fide training technique to be used for improving the efficiency of an individual within a command or unit through the correction of some deficiency in that individual’s performance of duty. It may be assigned only if genuinely intended to accomplish that result. It is not to be used as a substitute for judicial (court-martial) action or nonjudicial punishment (NJP), and must be logically related to the deficiency in performance for which it was assigned”.

In order to properly implement EMI, you must first identify the Marine’s deficiency, and then you must assign a corrective action that is **logically** related to correcting that deficiency.

EMI should be assigned in writing. Per JAGMAN paragraph 0103, officers and NCOs can administer EMI during working hours, but only commanders can impose EMI for after working hours.

Finally, the JAGMAN lists the following limitations on EMI:

- two hours maximum per day
- Not on the Sabbath
- assigned for reasonable number of days
- Marine entitled to normal liberty upon completion
- EMI is not reported in the Marine's record book

2. What is the difference between EMI and non-judicial punishment? What is the difference between EMI and hazing?

Discussion: EMI and NJP are administrative in nature, but EMI is not punishment. According to the Manual for Courts-Martial, NJP "provides commanders with an essential and prompt means of maintaining good order and discipline and also promotes positive behavior changes in servicemembers without the stigma of a court-martial conviction." EMI is a lesser form of administrative action, designed to correct a deficiency in an individual's performance of duty.

Marine Corps Order 1700.28 defines hazing as "*any conduct whereby a military member or members, regardless of service or rank, without proper authority causes another military member or members, regardless of service or rank, to suffer or be exposed to any activity which is cruel, abusive, humiliating, oppressive, demeaning, or harmful. Soliciting or coercing another to perpetrate any such activities also considered hazing. Hazing need not involve physical contact among or between military members; it can be verbal or psychological in nature. Actual or implied consent to acts of hazing does not eliminate the culpability of the perpetrator. Whether an individual consents or volunteers is immaterial; no service member may consent to acts of hazing being committed upon them*".

3. Can you identify the lance corporal's deficiency (or deficiencies)? What are some lawful ways to correct his behavior? In this case, the 1stSgt correctly recognized that the PT session was not appropriate EMI. What was the deficiency that you were trying to correct?

Discussion: Recall that the LCpl and PFC were engaging in an unsafe activity by throwing the sledge hammer back and forth. It seems that both Marines lack situational awareness, an appreciation for safety, common sense, and to a certain extent, force protection. What are some ways to help the LCpl appreciate the "big picture", specifically, that immature and inattentive behavior in garrison and on deployment can lead to injuries and even death? You should be concerned that this type of behavior can lead to problems in other, more serious areas. For example, how often does a failure to obey weapons handling rules lead to tragedy?

The PT session was unlawful EMI because it was not logically related to the LCpl's deficiency. There is no evidence that the LCpl was physically weak, but rather that he was immature. Although the tough PT lesson may have encouraged him to think twice about playing catch with a hammer in the future, you still did not address the underlying problem: his failure to appreciate the second and third order effects of his

childish behavior. Until he learns this lesson, there remains a good chance that he will continue to behave immaturely and therefore remain a danger to himself and others.

Some examples of appropriate EMI for typical infractions:

Lateness to appointed place of duty Early muster with appropriate member of the chain of command.

Incorrect uniform. Uniform inspections.

Failure to properly secure area. Require Marine to ensure area properly secured each day for a period of EMI.

Applicable references: JAGINST 5800.7E, Manual of the Judge Advocate (JAGMAN); MCO 1700.28, Hazing; Manual for Courts-Martial.